

Nina Bell, Executive Director
Northwest Environmental Advocates
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Dear Ms. Bell:

Thank you for your July 17, 2014 letter stating your ~~extensive~~ concerns with Oregon's water quality trading program. We understand the issues you raised with the National Pollutant Discharge System (NPDES) permits the Oregon Department of Environmental Quality (ODEQ) has issued so far that authorize the permittees to meet their temperature limits through purchasing temperature credits. Water quality trading, and especially, trading between point sources and nonpoint sources, continues to interest a wide range of stakeholders because of its potential to provide greater environmental benefits than technology-based controls and at less cost. However, because of the lack of clear direction from the Clean Water Act as to how it should be implemented, ~~much~~ confusion remains as to how to design a trading program that meets all the regulatory requirements that apply to issuing NPDES permits.

As you are aware, Oregon first tested the concept of water quality trading with a pilot project ~~that~~ resulted ~~in~~ the Clean Water Services (CWS) permit.¹ ~~The novel permit that authorized it~~ CWS to create and use ~~temperature~~ thermal load credits to offset ~~the thermal load in their discharge in order to~~ temperature limit it needed to meet in its permit limits. The model established by CWS is one that illustrates what a leading ~~sewage treatment plant operator~~ municipal wastewater utility can do with significant in-house resources to draw upon. The City of Medford's permit was ODEQ's next effort to provide an example that would work for cities with ~~more~~ limited resources. It introduced an important element, in which third parties would be able to implement restoration projects in order to generate ~~saleable~~ sell the credits to the permittee, and thereby free up the permittee from direct involvement in managing restoration projects. This is a compliance option that is attractive to many permittees because it is intended to be as straight-forward as signing a contract to have a technology or plant upgrade installed to comply with a water quality limit. However, your comments submitted to ODEQ after the permit was issued, as well as the issues raised in your July 17 letter, showed there are many important details ~~it needed~~ to work out before the that trading model ~~should be~~ is used in ~~another~~ NPDES permitting.

EPA Region 10 wants to see ODEQ strengthen its water quality trading program, so that is why we provided ~~such~~ substantive comments on the draft permit proposed for the City of Wilsonville. Unfortunately, ~~Willsonville~~ Wilsonville withdrew its proposal for the modified permit before ODEQ could revise the permit and thereby show how it would respond to both our comments and yours. We were also ~~greatly~~ disappointed in Wilsonville's decision to go ahead with the installation of a cooling tower to meet their ~~temperature~~ thermal load limit, and now there will be a visible symbol of a lost opportunity to spend limited public dollars on meaningful actions to reintroduce ~~more~~ natural processes to keep the river cool, ~~rather than mechanical solutions that provide very narrow benefits to the watershed~~.

We remain committed to working with ODEQ to strengthen its water ~~quality trading~~ quality trading program, along with the environmental agencies responsible for ~~those trading~~ in Idaho and Washington.

¹ Oregon Department of Environmental Quality, NPDES Permit, Clean Water Service, Issue Date July 27, 2005. http://www.deq.state.or.us/wqpr/2114_A0907171247157194946.PDF

Commented [BK1]: CWA, NPDES regulations, EPA. Is it really the CWA that should provide clear direction or just EPA in general?

Commented [SC2R1]: I didn't say EPA because EPA has provided many guidance documents – but the CWA doesn't provide enough to pin down the best way to do it without being challenged.

Commented [BK3]: Was the resulting trading scheme a collaboration between DEQ and CWS? Maybe this sentence gives too much credit to CWS?
CSW is in the unique position with this watershed permit. Load can be aggregated from multiple WWTPs. Permit doesn't explain how discharge loads will be calculated and how compliance will be evaluated. I'd like to see DMRs to see reporting and compliance with thermal load limits including credit offsets.
This permit has other significant provisions that would not be allowed in the next issuance like authorizing discharges from emergency outfalls and flow blending.

Commented [SC4R3]: The trading scheme was an EPA-DEQ-CWS collaboration but CWS really did a lot of the heavy-lifting on figuring out how to make it work. I didn't mean to imply that the CWS permit couldn't be improved either – I was just trying to show a progression in testing the trading concept in these permits.

Commented [BK5]: I'm not so sure Medford suffered from lack of resources as much as they had to rely on 3-parties to generate credits. CWS had the advantage of begin able to generate offset over which they had control.

Commented [SC6R5]: I heard that Medford didn't have the staff to oversee restoration projects – they just wanted to sign a contract to have someone else come up with the strategy to meet their thermal load limit. They hired an engineering contractor to look into it for them, and he ended up switching his recommendation from the big retention pond to having TFT generate the credits.

We believe the “Joint Recommendations” project funded by the (spell out name) (NRCS) grant, ~~and that is~~ being led by the Willamette Partnership and The Freshwater Trust, is the best opportunity ~~to do the for~~ important first step, ~~which is to sort through what are th~~ needed to identify critical elements in designing a successful trading program. The project also provides an important venue for ~~the region’s~~ regional water quality regulators to identify and discuss the best options for addressing difficult issues that quickly emerge with trading. The draft document, ~~which will~~ soon be released for public input, is an extensive set of recommended practices and elements (“Joint Recommendations”) for each state to consider when designing a water quality trading program, but is by no means a blueprint or a manual for a watershed’s stakeholders to implement and begin trading. A tremendous amount of hard work ~~will still need to take place~~ is needed for Oregon to revamp its program, but we believe the draft Joint Recommendations document identifies important options for them to consider adopting ~~that will to~~ address many of the serious issues you identified.

It is up to ODEQ to decide the process it would like to use to strengthen its water quality trading program, and we are urging them to move from the Internal Management Directive approach and instead use a transparent process for establishing a rule or guidance and one that ~~is~~ invites public comment and participation. The complexity of the issues ~~that need~~ to be considered can only be worked through in an open process where a multitude of interests is represented.

I encourage you to actively participate in the process ODEQ establishes and work with them to strengthen the state’s water quality trading program. Your advocacy will be helpful in ensuring, and also to advocate for the necessary investment in the processes that are essential for water quality trading to deliver on its promise to provide a greater and more cost effective environmental benefit to the watershed than traditional ~~technology infrastructure~~-based compliance solutions.

Sincerely,

Dan Opalski
Director